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To: Rules_Comments@ao.uscourts.gov
cc:
Subject: I oppose proposed FRAP 32.1

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I am opposed to proposed FRCP 32.1 because it is bad for the courts and for litigants, particularly, the indigent.

I oppose the proposed FRAP 32.1 which would allow citation of unpublished opinions as precedent.

According to the proposed rule, if you cite an unpublished opinion, you must attach a copy of the opinion and serve it with your pleading, order or other written disposition unless it is available in a "publicly accessible electronic database."

This proposed rule will have disastrous consequences for all indigent litigants.

The pro se litigants, sole practitioners and others who don't have access to electronic research will be tremendously disadvantaged. How can imprisoned, pro se habeas petitioners ever comply with the requirement that they serve a copy of the unpublished decision? Will their pleading be struck because they did not know how or where to obtain the copy of the unpublished decision?

Additionally, I believe giving precedential value to all opinions, whether they be published or unpublished will cause additional delays in appellate proceedings since some judges may take more time in drafting the unpublished decisions. Indigent defendants will often need to have their appeals determined on an expedited basis, particularly where the appeal involves bail or sentencing.

Unpublished decisions often contain little to no reasoning or analysis, thus, we will have to spend valuable time and available page space explaining what the Court must have meant or must not have considered in our pleadings and appellate briefs.

Judges almost uniformly oppose the amendment and they cover the ideological spectrum from Richard Posner through Judges Kozinski and Reinhardt, who co-authored an article on this subject.